

## Letter of Intent

February 24, 1995

America Online, Inc., a Delaware corporation ("AOL") and Wide Area Information Servers, Inc., a California corporation ("WAIS"), wish to memorialize their present intention to enter into an agreement regarding a merger of WAIS with a wholly-owned subsidiary of AOL upon the following principal terms and conditions.

1. **Structure; Timing.** WAIS will merge with AOL's wholly-owned subsidiary pursuant to a mutually agreed upon Agreement and Plan of Reorganization (the "Agreement"). WAIS will be the surviving corporation. Execution of the Agreement is scheduled for the week of March 20, 1995. The transaction will be accounted for by the pooling of interests method of accounting. The merger will be structured to be tax-free under Section 368(a)(2)(E) of the Internal Revenue Code.
2. **Effect of Merger; Conversion Ratio.** WAIS currently has 7,500,000 shares of Common Stock outstanding, and 594,000 shares of Common Stock issuable pursuant to options that will be vested on or prior to March 31, 1995, or 92.7% in outstanding shares and 7.3% in vested options. AOL will issue that number of shares of AOL Common Stock which could be purchased for 92.7% multiplied by \$13 million, or \$12,051,000 (with AOL Common Stock valued for such purpose at \$65 per-share (the "AOL Reference Price")) to WAIS's shareholders in return for all outstanding shares of WAIS Common Stock (with the number of shares of AOL Common Stock to be issued in consideration of WAIS Common Stock to be referred to as the "AOL Closing Shares"). Proceeds will be divided among WAIS shareholders in proportion to the common share equivalents of their holdings. Appropriate adjustment will be made to the AOL Closing Shares in the event of any stock split, recapitalization, stock dividend or similar change in AOL's outstanding stock prior to the closing date of the transaction.
3. **Collar.** The number of AOL Closing Shares may be adjusted depending on the average of the closing price per share of AOL Common Stock, as quoted on the Nasdaq National Market and as reported in the Wall Street Journal during the ten trading days ending on the trading day preceding the Closing Date (the "AOL Closing Price"). If the AOL Closing Price is greater than or equal to 85% and less than or equal to 115% of the AOL Reference Price, then the AOL Closing Shares shall remain unchanged. If the AOL Closing Price is less than 85% or more than 115% of the AOL Reference Price, then the number of AOL Closing Shares shall be adjusted ratably so that the AOL Closing Shares multiplied by the AOL Closing Price shall remain constant at 85% (if the AOL Closing Price is less than the AOL Reference Price) or 115% (if the AOL Closing Price is greater than the AOL Reference Price) of \$12,051,000. Notwithstanding the foregoing, if the AOL Closing Price is less than 85% of the AOL Reference Price, AOL will have the right in good faith to renegotiate the consideration to be paid and to terminate the agreement if mutual agreement on that point cannot be achieved.

4. **Treatment of Options.** WAIS options will be converted into AOL options for corresponding AOL Common Stock, with the number of shares and exercise price proportionally adjusted to give effect the conversion formula described above. There are currently 1,890,000 options outstanding, and WAIS understands that any additional options to purchase WAIS Common Stock will be canceled at the closing and replaced by the options described under "Grant of Stock Options at Closing" below. Continuous employment with WAIS will be credited to an optionee for the purposes of determining the number of shares subject to exercise after the merger. The term, exercisability, vesting schedule and all other terms of the options will remain otherwise unchanged. That is, no options will be accelerated solely as a result of the merger. AOL will cause the shares of Common Stock issuable upon exercise of assumed options to be registered with the SEC on Form S-8, such that such shares will be freely tradable, subject to the volume and manner of sale restrictions imposed by Rule 144 on affiliates of AOL.

5. **Post Merger Employment Benefits.** Employees of WAIS who become employed by AOL after the merger will become eligible (within a reasonable period after the closing of the merger) to participate in the same employee benefit plans as are generally available to similarly situated employees of AOL.

6. **Grant of Stock Options at Closing.** Upon closing of the merger, the following options to purchase AOL Common Stock will be granted under AOL's standard employee equity plan, in each case with an exercise price equal to the closing price of AOL Common Stock on the trading day immediately prior to closing:

- (i) **Brewster Kahle Option.** Mr. Kahle will receive an option to purchase shares with an aggregate exercise price of \$3,500,000. Such option will vest as to 1/2 of the shares on the second anniversary of the closing date, with an additional 1/4 of the shares vesting on the third and fourth anniversaries of the closing date.
- (ii) **Options for Current Employees.** Options to purchase shares with an aggregate exercise price of \$2,500,000 will be granted to other employees of WAIS who are employed as of the date hereof and who remain employed at the closing date. Such options will have standard, ratable 4 year vesting, with the first vesting date at the first anniversary of the closing date. The allocation of these options will be specified by Mr. Kahle in the Agreement and will be subject to the reasonable approval of AOL.
- (iii) **Options for New Employees.** Options to purchase shares with an aggregate exercise price of up to \$2,000,000 will be granted to other employees of WAIS who are hired after the date hereof and who are employed at the closing date. Such options will have standard, ratable 4 year vesting. The allocation of these options will be specified by Mr. Kahle from time to time prior to closing and will be subject to the reasonable approval of AOL.

7. **Noncompetition Agreements.** Mr. Kahle and other mutually agreed key employees to be identified in the Agreement will be requested to execute noncompete/nonsolicitation agreements with a term equal to the longer of 2 years from closing and 1 year after termination of employment (but in no event longer than 3 years from closing). No separate consideration will be paid for the entry into such agreements, other than the issuance of shares and/or the assumption of options in the merger.

8. **Securities Law Compliance; Resale Restrictions.** AOL will issue the shares in the merger pursuant to the "private placement" exemption from registration under the Securities Act of 1933, and the shares received by WAIS shareholders in the merger will therefore be restricted securities within the meaning of Rule 144 and will not be eligible for resale under Rule 144 for a period of two years following the merger. AOL will grant the former WAIS shareholders piggyback registration rights on any public offerings by AOL or by other WAIS shareholders during that two year period. The pooling rules require that there be no sales by WAIS affiliates of their WAIS stock or AOL stock issued in exchange therefor for the period commencing 30 days prior to consummation of the merger and ending at such time as financial statements covering 30 days of combined operations of the two companies are publicly released (this is the "pooling lock up period"). WAIS affiliates will be required to acknowledge and agree in writing to the foregoing resale restrictions. AOL affiliates will be subject to similar restrictions.

*ask for  
reg's here*

9. **Corporate Approval; Shareholder Pre-Approval.** WAIS represents that its Board of Directors has authorized and approved the execution of this Letter of Intent. WAIS shareholder approval will be required at closing. WAIS and WAIS's officers and directors will use best efforts to cause the shareholders of WAIS to approve the merger and WAIS's directors will recommend that WAIS's shareholders approve the merger. Mr. Kahle will agree to vote in favor of the merger at the time the Agreement is executed.

10. **Representations; Escrow.** Each party will make customary representations and warranties which will expire at the termination of the escrow, below. The Agreement will contain mutual indemnification of each party against breaches of the other's representations, warranties and covenants. An aggregate of 10% of the shares issuable to WAIS's shareholders and vested option holders will be held in escrow as security for WAIS's indemnity obligations. There will be no recoveries from escrow until aggregate claims exceed \$25,000, after which recovery will be from the first dollar. The escrow shall expire upon the earlier of twelve months after the merger or upon release of audited financial results of the combined company.

11. **Due Diligence.** AOL and its attorneys and accountants will have full access to the books and records of WAIS from the date hereof to complete a due diligence investigation of WAIS.

12. **Closing Conditions; Covenants.** Each party's obligations will be subject to customary closing conditions, including (i) those required to implement the deal terms

*→ Brenda Wilson Soncini*  
described above, (ii) approval of the merger by 100% of WAIS's shares, and (iii) approval by the AOL Board of Directors. Closing will also be conditioned on the absence of any material adverse change in WAIS's assets, employee base or business. Closing will be scheduled to occur on or about March 29, 1995. Closing will also be conditioned on satisfactory completion of AOL's due diligence investigation. Customary pre-closing covenants will be included in the Agreement.

13. **No-Shop Provision; Break Up Fee.** WAIS agrees that, until March 29, 1995 or the earlier mutual abandonment of the transaction contemplated hereby, WAIS and Mr. Kahle will not, and will not authorize any officer or director of WAIS or any other person on its behalf to, solicit, encourage, negotiate or accept any offer from any party concerning: (i) the possible disposition of all or any substantial portion of WAIS's business, assets or capital stock by merger, sale or any other means or any other transaction that would involve a change in control of WAIS; or (ii) the sale of any equity or debt securities of WAIS. WAIS will promptly notify AOL in writing of any such inquiries or proposals. If WAIS merges with, or WAIS or its assets are acquired by, a company other than AOL or a wholly-owned subsidiary of AOL during a period of one year after the date hereof based on any discussion during the no-shop period, WAIS (or the acquiring company) will pay AOL a sum of \$5,000,000 and AOL will make no other claims against WAIS or its shareholders regarding this transaction. WAIS shall have no obligations under this Section if AOL unilaterally decides not to proceed with this transaction or causes it not to occur (other than as a result of WAIS's breach of the Agreement or intentional failure to cause a condition of closing to occur). The Agreement will contain a section substantially identical to the foregoing.

14. **Fees and Expenses.** AOL will pay promptly after closing up to \$50,000 of the legal and accounting fees and disbursements incurred by WAIS in connection with the transaction. *→ 50000 not \$M*

15. **Hart-Scott-Rodino Compliance.** A Hart-Scott-Rodino Act filing will not be required with respect to the transaction. *→ 10000 + M/A letter*

16. **Public Disclosure.** WAIS will make no public disclosure of the negotiation of the merger without the prior written consent of AOL. AOL will make no public disclosure of the negotiation of the merger unless, in the opinion of its counsel, such disclosure is required by law. The parties agree to issue a joint press release upon signing of the Agreement. The parties will not make any other public announcement of this transaction without the other's prior written consent. WAIS agrees to take reasonable actions to avoid any trading in securities of AOL by WAIS's officers, directors, employees and agents that would be based on material nonpublic information that relates to the proposed merger or that was learned in the due diligence process. *Patricia Wilson*

17. **Confidentiality.** Each party acknowledges its continuing obligations under the Nondisclosure Agreement dated \_\_\_\_\_ with respect to matters disclosed during the negotiations and due diligence process contemplated hereby.

18. **Broker's or Finder's Fees.** AOL and WAIS acknowledge that they have not and will not enter into an agreement with any employees, officers, directors or outside contractors that would result in a broker or finder fee pertaining to the proposed merger.

19. **Continuation of Business.** From the date hereof until the closing, WAIS will preserve and operate its business in the ordinary course and will not enter into any transaction or agreement or take any action out of the ordinary course or enter into any transaction or make any commitment involving a license of intellectual property, an expense or capital expenditure by WAIS in excess of \$50,000 or a commitment of development resources that would extend beyond the closing date, without AOL's written consent.

20. **Counterparts.** This Letter of Intent may be executed in counterparts and the counterparts together will constitute a single, fully-executed original.

21. **Nonbinding Document.** This Letter of Intent does not constitute an offer, is not binding (except for the "no shop" provisions of Section 12, the "public disclosure" provisions of Section 13 and the "continuation of business" provisions of Section 19), and is not a definitive agreement. All rights and obligations of the parties are subject to execution of definitive mutually satisfactory agreements and obtaining all required corporate approvals. The parties will use diligent efforts to complete, execute and deliver the Agreement promptly after the date hereof and to close the transaction within the time period set forth above.

This Letter of Intent is executed as of the date first set forth above.

AMERICA ONLINE, INC.

WIDE AREA INFORMATION  
SERVERS, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Brewster Kahle, individually

## LOAN AGREEMENT

This Loan Agreement (this "Agreement") is made and entered into as of February 27, 1995 (the "Effective Date"), by and between Wide Area Information Servers, Inc., a California corporation ("Borrower"), and America Online, Inc., a Delaware corporation ("Lender"), who agree as follows:

1. **CERTAIN DEFINITIONS.** As used herein, the following terms shall have the meanings set forth below:

1.1 **Note.** The term "Note" will mean the Secured Promissory Note dated of even date herewith of Borrower in favor of Lender in the form attached hereto as Exhibit A.

1.2 **Payment Date.** The term "Payment Date" will have the meaning given to such term in Section 3 of the Note.

1.3 **Loan Documents.** The term "Loan Documents" means, collectively, this Agreement, the Note, and the Security Agreement (as defined below).

### 2. **NOTE; SECURITY.**

2.1 **The Note.** On the Effective Date of this Agreement Lender will loan \$500,000 to Borrower (the "Loan") which will be evidenced by the Note. Subject to the provisions of this Agreement requiring earlier payment by Borrower of the principal and/or interest of the Loan (including but not limited to the provisions of Section 3.1 hereof), or any contrary provision of the Note, all principal and accrued interest under the Note remaining unpaid on the Payment Date will be paid to Lender in full on the Payment Date.

2.2 **Collateral Security.** All of Borrower's obligations to Lender arising under or in connection with this Agreement and the Note will be secured by the grant to Lender by Borrower of a first priority security interest in all the assets of Borrower as provided in that certain Security Agreement dated of even date herewith between Borrower and Lender in the form attached hereto as Exhibit B (the "Security Agreement"). One or more UCC-1 financing statements in the form of Exhibit C attached hereto will be executed by Borrower and filed by Lender.

### 3. **EVENTS OF DEFAULT.**

3.1 **Events of Default.** The occurrence of any of the following events will constitute an "Event of Default":

(a) Borrower fails to pay any principal or any accrued interest under the Note when the same is due and payable, and such failure to pay is not cured by Borrower within five (5) calendar days after Lender gives Borrower written notice of such failure to pay; or

(b) Borrower defaults in any other respect under the Loan Documents and such default is not cured by Borrower within thirty (30) calendar days after Lender gives Borrower written notice of such default; or

(c) Borrower or any of its subsidiaries becomes insolvent, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a receiver, liquidator, custodian or trustee for it or for a substantial part of its property or business, or such a receiver, liquidator, custodian or trustee otherwise is appointed and is not discharged within thirty (30) calendar days after such appointment; or

(d) Bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors are instituted by or against Borrower or any of its subsidiaries, or any order, judgment or decree is entered against Borrower or any such subsidiary decreeing its dissolution or division; provided, however, that with respect to an involuntary petition in bankruptcy, such petition has not been dismissed within thirty (30) days after the filing of such petition; or

(e) The Loan Documents for any reason (other than the satisfaction in full of all amounts owing in connection with the Loan) cease to be, or are asserted by Borrower not to be, legal, valid and binding obligations of Borrower, enforceable in accordance with their terms, and such occurrence has not been cured to Lender's satisfaction within five (5) calendar days after Borrower becomes aware thereof.

**3.2 Remedies of Lender.** Upon the occurrence and during the continuance of an Event of Default, at Lender's sole option by written notice to Borrower, Lender may do any one or more of the following:

(a) Declare the entire principal amount of, and all accrued interest on, the Note to be at once due and payable, whereupon such amounts will immediately become due and payable in full, provided that in the case of an Event of Default listed in paragraph (c) or (d) of Section 3.1, the principal and interest will immediately become due and payable in full without the requirement of any notice or other action by Lender; and/or

(b) Exercise all rights and remedies granted under the Loan Documents or otherwise available at law or in equity. Lender will have no obligation to exercise any of its rights or remedies under the Security Agreement prior to exercising any of its rights or remedies under this Agreement or under the Note.

#### **4. REPRESENTATIONS OF BORROWER.**

**4.1 Organization.** Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

**4.2 Due Authorization and Binding Agreement.** All corporate action on the

part of Borrower necessary for the authorization, execution, delivery and performance of all obligations of Borrower under the Loan Documents has been taken. The Loan Documents, when executed, will constitute valid and legally binding obligations of Borrower, enforceable in accordance with their respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) the effect of rules of law governing the availability of equitable remedies.

**4.3 No Other Debt or Security Interests.** Borrower is not indebted to any other party, except as indicated on the Schedule of Indebtedness attached hereto. Borrower has not granted any other party a security interest in any of its assets, except for liens securing an aggregate of no more than \$250,000 of payments in connection with the equipment leases listed on the Schedule of Equipment Leases attached hereto.

**5. CONDITIONS PRECEDENT.** Lender shall make the Loan to Borrower under this Agreement upon satisfaction of the following conditions precedent:

**5.1 Note and Security Agreement.** Lender shall have received the Note, the Security Agreement and the UCC-1, all duly executed by an authorized officer of Borrower.

**5.2 Corporate Proceedings.** Lender shall have received from Borrower all corporate documents related to this Agreement and the Loan as Lender may reasonably request.

**6. MISCELLANEOUS.**

**6.1 Entire Agreement.** The Loan Documents, and the exhibits and schedules attached thereto, constitute the entire agreement and understanding among the parties with respect to the subject matter thereof and supersede any prior understandings or agreements of the parties with respect to such subject matter.

**6.2 Successors and Assigns.** The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and assigns of the parties; provided, however, that Borrower may not assign or delegate any of its rights or obligations hereunder without Lender's prior written consent, and any assignment or delegation without such consent shall be void.

**6.3 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California as applied to agreements entered into solely between residents of, and to be performed entirely in, such state, without reference to that body of law relating to conflicts of law or choice of law.

**6.4 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.



**6.5 Notices.** Any notice required or permitted under this Agreement will be given in writing and will be deemed effectively given (i) upon personal delivery; (ii) upon confirmed transmission by telecopy or telex; (iii) three (3) business days following deposit with the United States mail, by certified or registered mail, return receipt requested, postage prepaid; or (iv) one (1) business day after being dispatched via nationally recognized overnight express courier. Each party's address for notice under this Agreement will be:

To Borrower:

Wide Area Information Servers, Inc.  
1040 Noel Drive, Suite 102  
Menlo Park, CA 94025  
Attn: Brewster Kahle, President  
Fax No.:

with a copy to:

Allen Morgan, Esq.  
Wilson, Sonsini, Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Fax No.: (415) 496-4085

To Lender:

America Online, Inc.  
8619 Westwood Center Drive  
Vienna, VA 22181  
Attn: General Counsel  
Fax No.: (703) 506-1942

with a copy to:

Mark C. Stevens, Esq.  
Fenwick & West  
Two Palo Alto Square, Suite 800  
Palo Alto, CA 94306  
Fax No.: (415) 857-0361

or at such other address as such party may specify by written notice given in accordance with this Section.

**6.6 Modification: Waiver.** This Agreement may be modified or amended only by a writing signed by the parties hereto. No waiver or consent with respect to this Agreement will be binding unless it is set forth in writing and signed by the party against whom such waiver is asserted. No course of dealing between Borrower and Lender will operate as a waiver or modification of any

party's rights under this Agreement. No delay or failure on the part of either party in exercising any right or remedy under this Agreement will operate as a waiver of such right or any other right. A waiver given on one occasion will not be construed as a bar to, or as a waiver of, any right or remedy on any future occasion.

**6.7 Rights and Remedies Cumulative.** The rights and remedies herein provided will be cumulative and not exclusive of any other rights or remedies provided by law or otherwise.

**6.8 Severability.** Any invalidity, illegality or unenforceability of any provision of this Agreement in any jurisdiction will not invalidate or render illegal or unenforceable the remaining provisions hereof in such jurisdiction and will not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

**6.9 Attorneys' Fees.** If any party hereto commences or maintains any action at law or in equity (including counterclaims or cross-complaints) against the other party hereto by reason of the breach or claimed breach of any term or provision of this Agreement, then the prevailing party in said action will be entitled to recover its reasonable attorneys' fees and expenses and court costs incurred therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**BORROWER:**

Wide Area Information Servers, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LENDER:**

America Online, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Attachments:**

Exhibit A - Promissory Note  
Exhibit B - Security Agreement  
Exhibit C - UCC-1  
Schedule of Indebtedness  
Schedule of Equipment Leases